IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

WP(C).No. 16805 of 2003(A)

PETITIONERS:

1. SOWMINY M.S., D/O.SANKUNNY M.M.,
HOUSE NO.17/5, NEAR LADIES HOSTEL, COLLEGE ROAD,
PALAKKAD NOW RESIDING AT "SOWMYAM", 6/662,
PIRAYIRI, PALAKKAD.

2. RAJITH RAJ K., S/O.K.RAJAGOPALAN,
"THIRUVONAM", C/O.V.KRISHNA KUMARAN,
UNGINCHUVADU, CHITTILLAMCHERRY, PALAKKAD,
NOW RESIDING AT KOOTAPURA HOUSE,CHITTILAMCHERRY,
PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

1. STATE OF KERALA,
REP. BY THE PRINCIPAL SECRETARY, DEPARTMENT OF
HIGHER EDUCATION, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. COMMISSIONER FOR ENTRANCE EXAMINATIONS,
SANTHI NAGAR, THIRUVANANTHAPURAM-1.

3. THE PRINCIPAL,
NEHRU COLLEGE OF ENGINEERING & RESEARCH CENTRE,
PAMPADY, THIRUVALWAMALA, TRICHUR DISTRICT.

4. THE PRINCIPAL,
COLLEGE OF NURSING, MOULANA HOSPITAL, MALAPPURAM.

5. THE PRINCIPAL, COLLEGE OF NURSING,
LOURDES HOSPITAL, ERNAKULAM, COCHIN.

6. M.G. UNIVERSITY, KOTTAYAM REP. BY REGISTRAR.

ADDL.R6 IS IMPLEADED AS PER ORDER DT. 22-10-2003 IN I.A.12959/2003.

BY ADV. SRI.GEORGE JACOB (JOSE)
SRI.KURIAN GEORGE KANNAMTHANAM
SRI.V.K.MUHAMMAD YOUSUF, SC, M.G.UTY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:

EXT.P1 COPY OF SELECTION MEMO.

EXT.P2 DETAILS OF DOCUMENTS.

EXT.P3 COURSE CERTIFICATE DT. 7-12-2002.

EXT.P4 RELEVANT PORTION OF INFORMATION BROCHURE.

EXT.P5 OPTION LIST DT. 20-5-2003.

EXT.P6 NOTICE ISSUED AT THE TIME OF COUNSELLING.

EXT.P7 INTIMATION DT. 20-5-2003.

EXT.P8 PETITION DT. 28-5-2003.

EXT.P9(a) & (b) COPY OF POSTAL RECEIPTS.

EXT.P10 IDENTITY CARD ISSSUED BY R3.

EXT.P11 ADMIT CARD.

EXT.P12 OPTION LIST DT. 20-5-2003.

EXT.P13 INTIMATION DT. 20-5-2003.

EXT.P14 RELEVANT PORTION OF THE PROSPECTUS.

EXT.P15 RECEIPT DT. 21-9-2002.

EXT.P16 RELEVANT PORTION OF THE BROCHURE.

EXT.P17 ORDER DT. 2-6-2003.

EXT.P18 RELEGANT PAGE OF THE PROSPECTUS.

EXT.P19 REGULATION NO. 8 TO 11 OF REVISED SYLLABUS (B.SC NURSING)

RESPONDENTS' EXHIBITS:

EXT.R3(a) COMMUNICATION DT. 11-11-2002.

EXT.R3(b) ORDER DT. 6-11-2002.

EXT.R3(c) COPY OF PAGE 29 OF THE PROSPECTUS.

EXT.R3(d) COMMUNICATION DT. 23-5-2003.

S. Siri Jagan, J.

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W.P(C) . No. 16805 of 2006

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Dated this, the 3rd January, 2007.

J U D G M E N T

Petitioners are students who appeared for the entrance examinations for admission to professional degree courses of Kerala in 2002. Originally, the petitioners were given admission to the course 'Information Technology' in Nehru College of Engineering & Research Centre at Thiruvillwamala. Pursuant to such allotment, the petitioners joined the institution. At that the time of admission, they surrendered their SSLC Book, Transfer Certificate and other relevant documents which are still in the custody of the 3rd respondent. Thereafter, by public advertisement, the Entrance Commissioner invited higher options from students for other courses, pursuant to which the petitioners applied. Considering their applications, by Exts. P7 and P13, the 1st petitioner was allotted the course of B.Sc (Nursing) in the 4th respondent's institution and the 2nd petitioner was allotted the same course in the 5th respondent's institution. At the time of admission to the 3rd respondent's institution, the 1st petitioner being a scheduled caste student, did not pay any fees, but submitted her certificates. But, the 2nd petitioner had paid an amount of Rs. 1.5 lakhs as also an additional amount of Rs. 15,750/- as fees for the course.

2. Pursuant to the allotment on higher option, the 1st petitioner approached the 3rd respondent for return of her certificates and the 2nd petitioner approached the 3rd respondent for return of the certificates as well as the fees paid, which was refused by the 3rd respondent. It is under the above circumstances, the petitioners have approached this Court seeking the following reliefs:

> “i) Call for the records relating to Exts. P1 to P16.
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> ii) Issue a writ of mandamus or other appropriate writ or order or direction directing the respondents No. 1 & 2 to see that the

petitioners are admitted in terms of Exts. P7 and P13 in the College headed by the respondents No. 4 & 5 respectively within a time limit to be fixed by this Hon'ble Court.

iii) Issue a writ of mandamus or other appropriate writ or order or direction directing the respondent No. 3 to issue the records including the Transfer Certificate to the petitioners as contemplated in Exhibits P7 and P13 forthwith to enable the petitioners to join in their newly allotted college in time and further directing the respondents No. 1 & 2 to see it so.

iv) Issue a writ of mandamus or other appropriate writ or order or directions directing the respondent No. 3 to return the amount covered in Ext. P15 to the petitioner No. 2 forthwith and direct the respondents No. 1 & 2 to see it so.

v) Issue a writ of mandamus or other appropriate writ or order or direction directing the respondents No. 1 and 2 to see that the petitioners is received Rs. 1.5 lakhs which he had deposited against payment seat on stipulated in Ext,.P16."

3. The 3rd respondent has filed a counter affidavit. From the same, it appears that the contention of the 3rd respondent is that if the petitioners are relieved from the institution, they would lose two students and consequent fees which they would have got from them.

4. Going by the scheme of the entrance examinations, it is common knowledge that admissions are made in accordance with a counseling process as per the prospectus issued. The allotment process contemplates re-allotment to higher order options as and when vacancies arise in the higher order option seats exercised by the petitioners. When the Government themselves have devised such an admission procedure which allowed the students to get themselves relieved from the institutions of original allotment and join the course and college to which they are reallotted, the 3rd respondent cannot either refuse to relieve the petitioners or to retain the certificates submitted by them at the time of admission. The institution is also liable to refund the fees already paid by the students. That being so, I am satisfied that the petitioners are entitled to get back the

documents submitted by them and the 2nd petitioner is entitled to refund of the amounts of Rs. 1.5 lakhs deposited at the time of admission and Rs. 15,750/- as evidenced by Ext. P15, if the same have actually been paid by the 2nd petitioner. However, the 3rd respondent would be entitled to retain proportionate fees for the period during which the 2nd petitioner actually underwent the course in the 3rd respondent's institution. Since the 1st petitioner did not pay fees by virtue of exemption enjoyed by her as a scheduled caste candidate, the question of such retention of fees does not arise. The certificates shall be returned to the petitioners and refund made to the 2nd petitioner within a period of one month from the date of receipt of a copy of this judgment. The writ petition is disposed of as above.

Sd/- S. Siri Jagan, Judge.

Tds/